

LESLIE E. DEVANEY
ANITA M. NOONE
LESLIE J. GIRARD
SUSAN M. HEATH
GAEL B. STRACK
ASSISTANT CITY ATTORNEYS

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

Casey Gwinn
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO, CALIFORNIA 92101-4100
TELEPHONE (619) 533-5800
FAX (619) 533-5856

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**REPORT TO THE COMMITTEE ON RULES,
FINANCE AND INTERGOVERNMENTAL RELATIONS**

**CHARTER AMENDMENT REQUIRING A TWO-THIRDS VOTE OF THE ELECTORATE
TO ADOPT ANY MEASURE ITSELF REQUIRING A TWO-THIRDS VOTE OF THE
ELECTORATE**

INTRODUCTION

At the Rules Committee meeting of September 26, 2001, the City Attorney was asked to report back to the Committee on a potential amendment to the San Diego City Charter [City Charter] which would require a two-thirds vote of the electorate for the adoption of any matter which itself would require a two-thirds vote of the electorate. An amendment to the City Charter could be proposed for the next regular municipal election which, if adopted, would require a two-thirds vote to adopt measures themselves requiring a two-thirds vote, and which would be applicable to any measure appearing on the same ballot.

BACKGROUND

Proposition 218, embodied in Article XIII C of the California Constitution, requires that all new local taxes be submitted to the electorate before they become effective. Taxes for general governmental purposes of the City require a majority vote and taxes for specific purposes, even if deposited in the City's General Fund, require a two-thirds vote. Further, any general purpose tax which the City imposed, extended or increased, without voter approval, after December 31, 1994, may continue to be imposed only if approved by a majority vote in an election which must be held within two years of November 5, 1996. The City has not imposed, extended or increased any such taxes which are currently in effect.

Current state law, therefore, requires a two-thirds vote of the electorate for any imposition or increase in a special tax, but only requires a majority vote of the electorate for the imposition or increase in any general tax.¹

In September of 2000, an initiative measure qualified for the March 2002 ballot [General Tax Initiative]. Entitled “The San Diego Taxpayers Protection Act of 2000” the initiative, if adopted, would require a two-thirds vote of the electorate for “any increase in an existing general tax or imposition of a new general tax proposed by the San Diego City Council.” The initiative would add section 76.2 to the City Charter to that effect.² Under current law, this measure may be adopted by a simple majority of the electorate. California Constitution, article XI, section 3(a); City Charter section 223.

It has been proposed that the City Charter be amended to require a two-thirds vote of the electorate to adopt the General Tax Initiative.

¹A statutory initiative (Proposition 62) was adopted by the voters of the State at the November 4, 1986, General Election which, in part: 1) requires that any tax for general governmental purposes imposed by local governmental entities be approved by resolution or ordinance adopted by two-thirds vote of the governmental agency’s legislative body and by a majority of the electorate of the governmental entity; and 2) requires that any special tax (defined as taxes levied for other than general governmental purposes) imposed by a local governmental entity be approved by a two-thirds vote of the voters within the jurisdiction. While the requirements imposed by Proposition 62 were generally upheld by the California Supreme Court in *Santa Clara County Local Transportation Authority v. Guardino*, 11 Cal. 4th 220 (1995), the City has taken the position that, notwithstanding the *Guardino* decision, the provisions of Proposition 62 do not apply to charter cities. In any event, the provisions of Proposition 62 do not affect the analysis herein.

²The proposed City Charter section would read:

Notwithstanding any provision of this Charter to the contrary, any increase in an existing general tax or imposition of any new general tax may be levied by the Council only if the proposed levy has been approved by a two-thirds vote of the qualified electors of the City voting on the proposition. As used in this section, a “general tax” is a tax levied for the general fund to be utilized for general governmental purposes.

ANALYSIS

I

THE CHARTER MAY BE AMENDED TO REQUIRE A TWO-THIRDS VOTE FOR ANY MATTER ITSELF REQUIRING A TWO-THIRDS VOTE

As mentioned, currently an amendment to the City Charter only requires a simple majority vote. California Constitution, article XI, section 3(a); City Charter section 223. However, the conduct of city elections is a municipal affair, and the City Charter itself may be amended to change that vote requirement. California Constitution, article XI, section 5(b)(3). Accordingly, the City Charter could be amended to require a two-thirds vote of the electorate for any matter which itself requires a two-thirds vote, and there is no question that such a City Charter amendment would be effective standing on its own. Arguments could be made, however, that such a measure, appearing on the same ballot as the General Tax Initiative, would conflict with the General Tax Initiative, giving rise to questions as to its validity especially if the General Tax Initiative gained more votes.

II

THE INTENT OF THE ELECTORATE CONTROLS THE EFFECTIVENESS OF PROPOSITIONS ON THE SAME SUBJECT OR THAT CONFLICT

When two propositions on the same ballot are on the same subject, the initial question is whether the two measures irreconcilably conflict. If they do, the proposition gaining the highest number of votes controls. California Constitution, article XI, section 3(d); *Sacramento County Deputy Sheriffs' Assn. v. County of Sacramento*, 85 Cal. App. 4th 960, 965 (2000). In a number of instances the courts have considered measures that on the surface appear to conflict, but were found not to conflict because of the specific purpose and language of each. In such instances, the specific intent of one measure controlled the other despite the number of votes for each. *See generally Id.* at 965-967.

For example, in *Horn v. Allen*, 195 Cal. 121 (1924), the voters of the City of Los Angeles were presented with a proposal to adopt a new City Charter containing 11 “at large” council members. As an alternative, and on the same ballot, the voters were given a discrete option of dividing the city into 15 districts, with council members elected from each district. Both proposals passed, with the general charter proposal containing the “at-large” method gaining the most votes. In determining the controlling measure, the California Supreme Court held: “[I]f the form of the ballot presented to the voters was such as to permit a free expression on their part of a preference for the at-large plan . . . on the one hand or for the district plan on the other, and the

intention of the voters be readily ascertained and determined, we feel impelled to give full effect [to the intent of the voters].” *Id.* at 129. The court approached the matter from the viewpoint of the voters and determined there was no fatal conflict because, while the voters expressed a choice as to the adoption of a new charter, a majority of them also expressed a preference for the discrete idea of district elections, thus district elections was the adopted method under the new charter. *Id.* at 132.

In 1992, the Supreme Court elaborated on the nature of competing ballot measures and held that, to uphold the rights of the electorate, propositions approved at the same election should not be declared as competing and ineffective if they reasonably may be construed as not competing. *Yoshisato v. Superior Court*, 2 Cal. 4th 978, 988-989 (1992).

In *Sacramento County*, the court was called upon to determine the effectiveness of two measures. The first was a general amendment to the county’s charter which required disputes as to certain labor contracts to be submitted to binding arbitration, with the results of the arbitration not subject to any other action. The second measure required certain of those arbitration results to be submitted to a vote of the electorate in order to be effective. 85 Cal App. 4th at 963-964. The court, finding that there was no fatal conflict, uphold the effectiveness of the former as modified by the requirements of the latter holding:

[T]he intent of the electorate was readily and freely expressed and easily ascertainable from the terms of the measures and the method by which they were presented to the voters. . . .

. . . A voter who wished to adopt binding arbitration without reservation could vote yes on [the first measure] and no [on the second]. A voter who wished to adopt binding arbitration with the reservations expressed in [the second measure] could vote yes on both measures. . . .

. . . By adopting [the second measure] the electorate of Sacramento County can have meant and intended only one thing – to withhold limited types of contract provisions from the full reach of the [first measure].

Id. at 967-968.

Thus, if the intent of the electorate can be readily ascertained as to the choice between two competing measures, that intent will control and no fatal conflict will be found. In the absence of such readily ascertainable intent, if two propositions fatally conflict, the measure

gaining the most votes prevails.

III

A PROPOSITION MAY BE CRAFTED WHICH CLEARLY GIVES THE ELECTORATE A CHOICE REGARDING THE TWO PROPOSED INITIATIVES

The General Tax Initiative is a general measure requiring a two-thirds vote of the electorate to impose or increase any general tax. Any proposed measure, to appear on the same ballot as the General Tax Initiative, requiring a two-thirds vote to adopt the General Tax Initiative must clearly express the intent of the electorate that it be applicable to the General Tax Initiative in order to avoid the requirement of gaining more affirmative votes.

Enclosed as Attachment 1 is a draft ordinance which sets forth such a ballot measure [Super Majority Vote Initiative].³ The proposition would add section 226 to the City Charter to provide:

A) Notwithstanding any other provision of this Charter, any amendment of this Charter, ballot proposal, initiative, statute, law or regulation of any type, whether proposed to be adopted by the electorate, the City Council, or any other body acting pursuant to this Charter or the Municipal Code, that requires a vote of the electorate in excess of a simple majority for any matter, must itself be approved by a vote of the electorate in the same proportion as proposed, in order to be adopted, valid or otherwise effective.

B) This section may be adopted by a simple majority vote of the electorate, and shall be applicable to any amendment of this Charter, ballot proposal, initiative, statute, law or regulation of any type, as set forth in Subsection A, proposed to be adopted at the municipal election by which this Charter Section 226 is approved by the electorate, or otherwise adopted on or after the date of that municipal election, and shall not be applicable to any matter adopted or approved prior to the date of such municipal election.

³The Super Majority Vote Initiative has been written to provide for any voting requirements in excess of a simple majority, as certain proposals for vote requirements in excess of a simple majority but less than a two-thirds vote have been made in the past, and could be proposed in the future.

The intent of the electorate, that the Super Majority Vote Initiative be effective as to any matter approved at the same municipal election, could be further set forth in the ballot question to appear on the ballot. Attachment 1 sets forth a ballot question that provides such intent:

Shall the City Charter be amended to provide that, in order to be adopted or effective, any Charter amendment, ballot proposal, initiative, statute, law or regulation that requires a greater than simple majority vote of the electorate for any matter, *and which is proposed to be adopted at this election*, or otherwise on or after the date of this election, just itself be adopted by the same proportionate vote of the electorate? [Emphasis added.]

The City Attorney's Office believes that the Super Majority Vote Initiative, if approved by a majority vote of the electorate, would provide a readily ascertainable intent of the electorate that the General Tax Initiative be adopted by a two-thirds vote of the electorate. Consistent with the analysis in the cases discussed above, a voter desiring to require a two-thirds vote for general tax increases but wanting to impose such a requirement only by a simple majority could vote yes on the General Tax Initiative and no on the Super Majority Vote Initiative. A voter in favor of a two-thirds vote requirement for raising general taxes but only if approved by the same percentage of votes could vote yes on the General Tax Initiative and yes on the Super Majority Vote Initiative. If both matters passed with a simple majority vote, irrespective of the number of votes for each, the express intent of the electorate in adopting the Super Majority Vote Initiative would control, and the General Tax Initiative would not become effective. If, however, both matters passed, but with the General Tax Initiative gathering a two-thirds vote majority, both measures would become effective.

CONCLUSION

The City Charter may be amended to require a two-thirds vote of the electorate for any measure which itself requires a two-thirds vote. In order for such an amendment to be applicable to a measure appearing on the same ballot, the intent of the electorate to that effect must be readily ascertainable. The draft Charter amendment and ballot question enclosed as Attachment

1 set forth such intent, and would be operative and applicable if it were approved by a simple majority vote.

Respectfully submitted,

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Leslie J. Girard
Assistant City Attorney

LJG:je(043.1)
Attachment 1
cc: City Manager
City Auditor & Comptroller
RC-2001-29